

APPEAL NO. 021820
FILED AUGUST 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 13, 2002. The hearing officer determined that the contribution against the respondent's (claimant) impairment income benefits and supplemental income benefits for the effects of prior compensable injuries should be 10%. The appellant (carrier) has appealed, essentially arguing that the entire amount of the impairment rating (IR) assigned for specific conditions of the spine should be contributed out of the total IR for the claimant's _____, back injury, which resulted in surgery. The claimant has responded that the hearing officer's contribution should be upheld.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in determining that, assessing the cumulative impact of earlier injuries (the most recent of which had been 1984) and surgery on the present injury, the contribution should be 10%. The carrier suggests a method in which the previous injury is rated and that rating is simply arithmetically accounted for. However, contribution is assessed by taking the present injury and working back, not taking earlier injuries and "working forward."

The same suggested adjustment was proposed by the carrier in Texas Workers' Compensation Commission Appeal No. 971348, decided August 28, 1997. But, as noted in that decision:

[W]here the effect of a second injury is to essentially obliterate the effects of a first injury, there can be no "contribution." [T]he analysis of cumulative effect must be made by taking the current condition and then "working back," not by taking the person at his previously uninjured state and working forward. See Texas Workers' Compensation Commission Appeal No. 941338, decided November 22, 1994.

It is also worth repeating an oft-quoted provision from Appeal No. 941338:

We believe that consideration of the "cumulative impact" requires not only some assessment of extent of previous injuries but an analysis of how the injuries work together, *i.e.*, the extent to which prior injuries "contribute" to the present impairment. [citation omitted.] An earlier injury could well have a rating that does not parallel its impact on a subsequent injury. This [analysis] would carry out what appears to be the intent of the statute: that the present carrier should not have the amount it pays increased by the effect of an earlier work-related injury that is part of the current

impairment. By the same token, a current carrier should not receive a windfall for obtaining credit for an impairment that does not affect the current impairment for which it is liable.

The flaw with the carrier's doctor's analysis, upon which the carrier bases its case, is that by "working forward," he has effectively disallowed any liability for the carrier for the specific IR from the 1998 injury, except for the surgical procedure itself. The hearing officer has instead considered the cumulative impact along the principles set forth in our earlier decisions. We cannot agree with the carrier's argument that it was the burden of the claimant to show no cumulative impact; rather, it was the carrier's burden to prove the entitlement to and amount of contribution. We find no error and therefore affirm the decision and order.

The true corporate name of the insurance carrier is **TRANSPORTATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge